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CENTILLIUM COMMUNICATIONS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CENTILLIUM COMMUNICATIONS,
INC.,

Plaintiff,

vs.

ATLANTIC MUTUAL INSURANCE
COMPANY,

Defendant.

Case No. 4:06-cv-07824-SBA

STIPULATION AND ~~PROPOSED~~
PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The parties further acknowledge, as set forth in Section 10, below, that this

1 Stipulated Protective Order creates no entitlement to file confidential information under seal.
2 Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards
3 that will be applied when a party seeks permission from the court to file material under seal.

4
5 **2. DEFINITIONS**

6 **2.1 Party:** any party to this action, including all of its officers, directors,
7 employees, consultants, retained experts, reinsurers, and outside counsel (and their support staff).

8 **2.2 Disclosure or Discovery Material:** all items or information, regardless of
9 the medium or manner generated, stored, or maintained (including, among other things,
10 testimony, transcripts, or tangible things) that are produced or generated in disclosures or
11 responses to discovery in this matter.

12 **2.3 "Confidential" Information or Items:** information (regardless of how
13 generated, stored or maintained) or tangible things that qualify for protection under standards
14 developed under State law;

15 **2.4 "Highly Confidential- Attorneys' Eyes Only" Information or Items:**
16 extremely sensitive "Confidential Information or Items" whose disclosure to another Party or
17 non-party would create a substantial risk of serious injury that could not be avoided by less
18 restrictive means.

19 **2.5 Receiving Party:** a Party that receives Disclosure or Discovery Material
20 from a Producing Party.

21 **2.6 Producing Party:** a Party or non-party that produces Disclosure or
22 Discovery Material in this action.

23 **2.7 Designating Party:** a Party or non-party that designates information or
24 items that it produces in disclosures or in responses to discovery as "Confidential" or "Highly
25 Confidential – Attorneys' Eyes Only."

26 **2.8 Protected Material:** any Disclosure or Discovery Material that is
27 designated as "Confidential" or as "Highly Confidential – Attorneys' Eyes Only."
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2.9 **Outside Counsel:** attorneys who are not employees of a Party but who are retained to represent or advise a Party in this action.

2.10 **House Counsel:** attorneys who are employees of a Party.

2.11 **Counsel** (without qualifier): Outside Counsel and House Counsel (as well as their support staffs).

2.12 **Expert:** a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action and who is not a past or a current employee of a Party or of a competitor of a Party's and who, at the time of retention, is not anticipated to become an employee of a Party or a competitor of a Party's. This definition includes a professional jury or trial consultant retained in connection with this litigation.

2.13 **Professional Vendors:** persons or entities that provide litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also any information copied or extracted therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by parties or counsel to or in court or in other settings that might reveal Protected Material.

4. DURATION

Even after the termination of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs.

1 **5. DESIGNATING PROTECTED MATERIAL**

2 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

3 Each Party or non-party that designates information or items for protection under
4 this Order must take care to limit any such designation to specific material that qualifies under the
5 appropriate standards. A Designating Party must take care to designate for protection only those
6 parts of material, documents, items, or oral or written communications that qualify - so that other
7 portions of the material, documents, items, or communications for which protection is not
8 warranted are not swept unjustifiably within the ambit of this Order.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations that
10 are shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to
11 unnecessarily encumber or retard the case development process, or to impose unnecessary
12 expenses and burdens on other parties), expose the Designating Party to sanctions.

13 If it comes to a Party's or a non-party's attention that information or items that it
14 designated for protection do not qualify for protection at all, or do not qualify for the level of
15 protection initially asserted, that Party or non-party must promptly notify all other parties that it is
16 withdrawing the mistaken designation.

17 **5.2 Manner and Timing of Designations.** Except as otherwise provided in
18 this Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or
19 ordered, material that qualifies for protection under this Order must be clearly so designated
20 before the material is disclosed or produced.

21 Designation in conformity with this Order requires:

22 **(a) for information in documentary form** (apart from transcripts of
23 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
24 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the
25 bottom of each page that contains protected material. If only a portion or portions of the material
26 on a page qualifies for protection, the Producing Party also must clearly identify the protected
27 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
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1 portion, the level of protection being asserted (either “CONFIDENTIAL” or “HIGHLY
2 CONFIDENTIAL - ATTORNEYS’ EYES ONLY”).

3 A Party or non-party that makes original documents or materials available
4 for inspection need not designate them for protection until after the inspecting Party has indicated
5 which material it would like copied and produced. During the inspection and before the
6 designation, all of the material made available for inspection shall be deemed “HIGHLY
7 CONFIDENTIAL ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the
8 documents it wants copied and produced, the Producing Party must determine which documents,
9 or portions thereof, qualify for protection under this Order, then, before producing the specified
10 documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL” or
11 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) at the bottom of each page that
12 contains Protected Material. If only a portion or portions of the material on a page qualifies for
13 protection, the Producing Party also must clearly identify the protected portions) (e.g., by making
14 appropriate markings in the margins) and must specify, for each portion, the level of protection
15 being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
16 EYES ONLY”).

17 (b) for testimony given in deposition or in other pretrial or trial
18 proceedings, that the Party or non-party offering or sponsoring the testimony may, either during
19 the deposition or in writing at any time within 15 business days after receipt of the transcript,
20 designate all or portions of the deposition testimony to be Protected Material. During this 15
21 business day period, the entire deposition transcript (with the exception of the exhibits to the
22 transcript) will be treated as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”
23 Exhibits to the deposition transcript will be treated in accordance with whatever designation was
24 given those materials, if any, at the time of production or, if not previously produced, at the time
25 of the deposition. Only those portions of the testimony that are appropriately designated for
26 protection within the 15 business days shall be covered by the provisions of this Stipulated
27 Protective Order.

28 Transcript pages containing Protected Material must be separately bound

1 by the court reporter. Protected material contained within the deposition transcript shall be
2 designated by marking the bottom of the pages containing such information either
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” and
4 forwarding copies of these pages to the court reporter, Outside Counsel for the Parties, and to any
5 other person known to have a copy of the transcript.

6 (c) If no Party or nonparty designates the deposition transcript within 15
7 business days of receipt of the transcript, none of the deposition transcript will be treated as
8 Protected Material, with the exception of any previously designated exhibits to the deposition.

9 (d) **for information produced in some form other than documentary.**
10 **and for any other tangible items**, that the Producing Party affix in a prominent place on the
11 exterior of the container or containers in which the information or item is stored the legend
12 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only
13 portions of the information or item warrant protection, the Producing Party, to the extent
14 practicable, shall identify the protected portions, specifying whether they qualify as
15 “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

16 5.3 **Inadvertent Failures to Designate.** If timely corrected, an inadvertent
17 failure to designate qualified information or items as “CONFIDENTIAL” or “HIGHLY
18 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” does not, standing alone, waive the
19 Designating Party’s right to secure protection under this Order for such material. If material is
20 appropriately designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
21 ATTORNEYS’ EYES ONLY” after the material was initially produced, the Receiving Party, on
22 timely notification of the designation, must make reasonable efforts to assure that the material is
23 treated in accordance with the provisions of this Order.

24 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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26 6.1 **Timing of Challenges.** Unless a prompt challenge to a Designating Party’s
27 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
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economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party's confidentiality designation must do so in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel for the Designating Party. In conferring, the challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first.

6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality designation after considering the justification offered by the Designating Party may file and serve a motion pursuant to Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5) that identifies the challenged material and sets forth in detail the basis for the challenge. Each such motion must be accompanied by a competent declaration that affirms that the movant has complied with the meet and confer requirements imposed in the preceding paragraph and that sets forth with specificity the justification for the confidentiality designation that was given by the Designating Party in the meet and confer dialogue.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Until the court rules on the challenge, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a non-party in connection with this case only for

1 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
2 disclosed only to the categories of persons and under the conditions described in this Order.
3 When the litigation has been terminated, a Receiving Party must comply with the provisions of
4 section 11, below (FINAL DISPOSITION).

5 Protected Material must be stored and maintained by a Receiving Party at a
6 location and in a secure manner that ensures that access is limited to the persons authorized under
7 this Order.

8 **7.2 Disclosure of “CONFIDENTIAL” Information or Items.** Unless
9 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving
10 Party may disclose any information or item designated CONFIDENTIAL only to:

11 (a) the Receiving Party’s Outside Counsel of record in this action, as well
12 as employees of said Counsel to whom it is reasonably necessary to disclose the information for
13 this litigation and who have signed the “Agreement to Be Bound by Protective Order” that is
14 attached hereto as Exhibit A;

15 (b) the officers, directors, and employees (including House Counsel) of the
16 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
17 signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

18 (c) experts (as defined in this Order) of the Receiving Party to whom
19 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be
20 Bound by Protective Order” (Exhibit A);

21 (d) the Court and its personnel;

22 (e) court reporters, their staffs, and professional vendors to whom
23 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be
24 Bound by Protective Order” (Exhibit A);

25 (f) witnesses in the action to whom disclosure is reasonably necessary and
26 who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A). Pages of
27 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
28 separately bound by the court reporter and may not be disclosed to anyone except as permitted

1 under this Stipulated Protective Order.

2 (g) the author of the document or the original source of the information.

3 7.3 Disclosure of “**HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES**
4 **ONLY**” Information or Items. Unless otherwise ordered by the court or permitted in writing by
5 the Designating Party, a Receiving Party may disclose any information or item designated
6 “**HIGHLY CONFIDENTIAL -ATTORNEYS’ EYES ONLY**” only to:

7 (a) the Receiving Party’s Outside Counsel of record in this action, as well
8 as employees of said Counsel to whom it is reasonably necessary to disclose the information for
9 this litigation and who have signed the “Agreement to Be Bound by Protective Order” that is
10 attached hereto as Exhibit A;

11 (b) House Counsel of a Receiving Party (1) who has no involvement in
12 competitive decision-making or in patent prosecutions involving ASIC chips for use in and DSL
13 wireless routers and modems, (2) to whom disclosure is reasonably necessary for this litigation,
14 and (3) who has signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

15 (c) Experts (as defined in this Order) to whom disclosure is reasonably
16 necessary for this litigation, and who have signed the “Agreement to Be Bound by Protective
17 Order” (Exhibit A);

18 (d) the Court and its personnel;

19 (e) court reporters, their staffs, and professional vendors to whom
20 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be
21 Bound by Protective Order” (Exhibit A); and

22 (f) the author of the document, any person who had received it prior to this
23 litigation (i.e., addressees), and the original source of the information.

24
25 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
26 **IN OTHER LITIGATION**

27 If a Receiving Party is served with a subpoena or an order issued in other litigation that
28 would compel disclosure of any information or items designated in this action as

1 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” the
2 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately
3 and in no event more than three court days after receiving the subpoena or order. Such
4 notification must include a copy of the subpoena or court order.

5 The Receiving Party also must immediately inform in writing the Party who
6 caused the subpoena or order to issue in the other litigation that some or all the material covered
7 by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party
8 must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action
9 that caused the subpoena or order to issue.

10 The purpose of imposing these duties is to alert the interested parties to the
11 existence of this Protective Order and to afford the Designating Party in this case an opportunity
12 to try to protect its confidentiality interests in the court from which the subpoena or order issued.
13 The Designating Party shall bear the burdens and the expenses of seeking protection in that court
14 of its confidential material- and nothing in these provisions should be construed as authorizing or
15 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

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17 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

18 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
19 Material to any person or in any circumstance not authorized under this Stipulated Protective
20 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
21 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c)
22 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
23 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to
24 Be Bound” that is attached hereto as Exhibit A.

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26 **10. FILING PROTECTED MATERIAL**

27 Without written permission from the Designating Party or a court order secured after
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appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5.

11. FINAL DISPOSITION

Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days after the final termination of this action, each Receiving Party must return or destroy all Protected Material to the Producing Party. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, upon written demand, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty-day deadline that identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and that affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of

the material covered by this Protective Order.

DATED: May 11, 2007

FARELLA BRAUN & MARTEL LLP

By: [Signature]
Dennis M. Cusack
Katina Ancar

Attorneys for Plaintiff
CENTILLIUM COMMUNICATIONS,
INC.

DATED: May 10, 2007

SELVIN WRAITH HALMAN LLP

By: [Signature]
Gary R. Selvin
Joshua S. Leach

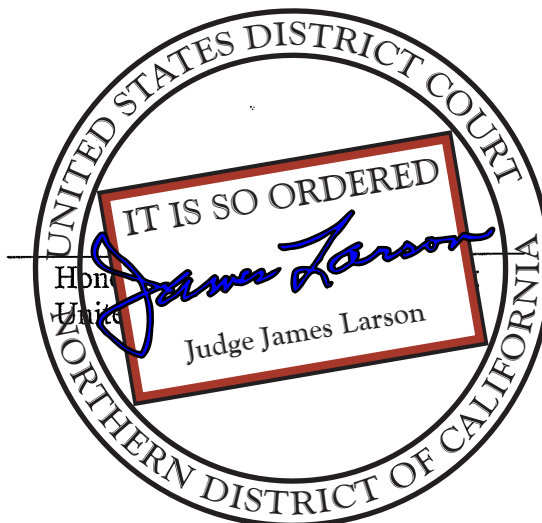
Attorneys for Defendant
ATLANTIC MUTUAL INSURANCE
COMPANY

ORDER

Good cause appearing, the Stipulation and Proposed Protective Order dated _____,
2007, shall be entered as set forth herein.

IT IS SO ORDERED.

DATED: May 16, 2007



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